

MEMORANDUM OF AGREEMENT
Between
The Oregon Department of Agriculture
And
The Oregon Board of Forestry

July 6, 1995

This Memorandum of Agreement is entered into between the Oregon Department of Agriculture, hereinafter referred to as "Agriculture," and the Oregon Board of Forestry, hereinafter referred to as "Forestry," to delineate the responsibilities and activities to be performed by each agency in regulating the use of pesticides on forestlands in Oregon. For this agreement, pesticides means any substance or mixture of substances meeting the definition provided in ORS 634.006 (8).

For the purposes of this agreement, "forestland" subject to the Oregon Forest Practices Act means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied. In this context, forestland does not include land dedicated for tree nurseries or seed orchards. "Forest tree species", as defined by ORS 527.620 (7), do not include cultured Christmas trees or intensively managed, short-rotation hardwood plantations.

Preamble

The Oregon Legislature has authorized Agriculture to regulate the registration, distribution, and use of pesticides in Oregon. This authority is contained in Oregon Revised Statutes (ORS) Chapter 634, known as the "Oregon Pesticide Control Act" and dates back to 1953. Since 1976, Agriculture has annually entered into cooperative agreement with the United States Environmental Protection Agency (EPA) Region 10 regarding the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in Oregon.

The Oregon Legislature has authorized Forestry to establish standards for forest practices in Oregon to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use² on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors. This authority is contained in ORS 527.610 to 527.992, known as the "Oregon Forest Practices Act" and dates back to 1971. Forestry is specifically directed by statute reference to consult with Agriculture before adopting rules on pesticide control [ORS 527.710 (4)(k)].

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Both Agriculture and Forestry have adopted administrative rules to carry out the purposes and intents of their respective authorizing statutes. The Forestry rules are administered and enforced by the State Forester.

Agriculture and the State Forester are members of, and active cooperators in, the Oregon Pesticide Analytical and Response Center (PARC). PARC coordinates and reports on state interagency investigations of actual or alleged health and environmental incidents involving pesticides in Oregon.

Mutual Agreements

A. The Roles of Agriculture and Forestry

1. In Oregon, Agriculture has entered into cooperative agreements with EPA regarding investigation, enforcement, applicator certification, groundwater protection, and worker protection under FIFRA. Through these agreements, EPA has recognized Agriculture as the state lead agency for the regulation of pesticides in Oregon. Also through these agreements, EPA has authorized primacy to Agriculture for enforcement of FIFRA in Oregon.

The Oregon Pesticide Control Act, and resulting administrative rules, provide the mechanism through which Agriculture carries out its' responsibilities to enforce FIFRA. The Oregon Pesticide Control Act can be, and in many instances is, more strict in the regulation of pesticides than is FIFRA.

In addition to the process for registration of pesticides by EPA, the Oregon Pesticide Control Act requires: (1) registration of pesticides, (2) education and licensing of certain pesticide users (including commercial pesticide applicators, operators, and dealers), (3) record-keeping, and (4) application of pesticides in accordance with product labeling. Agriculture has authority to conduct investigations, and take enforcement actions, including imposition of civil penalties, when a violation has been documented.

Agriculture will continue to exercise its statutory authority and responsibility as the lead agency for licensing pesticide users and for regulating the registration, distribution, and use of pesticides in Oregon, including forestlands.

2. Forestry's pesticide regulatory authority is limited to prescribing best management practices to ensure protection of soil, air, water, fish, and wildlife resources when pesticides are used on forestlands. The purpose of the chemical rules is to ensure that chemicals used on forestland do not occur in the soil, air, or waters of the state in quantities that would be injurious to wildlife, aquatic life, or to water quality, and to ensure that the vegetative components of riparian management areas and resource sites receive protection on chemical operations consistent with the protection expected on harvest operations.

The forest practice chemical rules must not be inconsistent, while minimizing duplication, with the requirements of :

- FIFRA administered by EPA;
- Oregon's pesticide control laws administered by Agriculture;
- Oregon's hazardous waste laws administered by the Department of Environmental Quality;
- Oregon's hazard communication rules administered by the Occupational Safety and Health Division; and
- The Federal Safe Drinking Water Act administered by the Oregon Health Division.

Forestry will exercise its statutory authority and responsibility to establish standards to be administered by the State Forester for the application of pesticides on Oregon forestlands. Forestry will also consider and accommodate the rules and programs of Agriculture to the extent deemed by Forestry to be appropriate and consistent with the Oregon Forest Practices Act and with Forestry's stated goal of ensuring that regulation of pesticides on forestlands is consistent with pesticide regulation on other land uses in Oregon.

B. Implementation Program

1. Pesticide Product Label Requirements Interpretation

Agriculture shall have sole state agency authority for interpreting pesticide product label requirements.

When the State Forester becomes aware of disagreements or uncertainties involving the interpretation of label requirements for forestry pesticides, the State Forester shall inform Agriculture and request clarification. Agriculture will respond with label interpretation.

When the State Forester becomes aware of practices that are potentially inconsistent with the requirements on the applicable product label, the State Forester shall inform the affected parties, gather information on such practices, and inform Agriculture. Agriculture may conduct an additional investigation and will determine if an enforcement action, under the authority of its statutes and rules, is appropriate.

EPA shall have final authority for approving any changes in pesticide product labels.

When the State Forester becomes aware of the potential need for changes in a product label to better protect forest resources, the State Forester shall inform Agriculture. Agriculture will determine if recommendations to EPA for pesticide product label modifications are necessary.

2. Administrative Rule Development

Forestry and Agriculture will coordinate in the development of any administrative rules that address the application of pesticides on forestlands.

The State Forester and Agriculture will cooperate to ensure that any rules proposed for Forestry adoption (OAR Chapter 629) and any resulting rule guidance are consistent with Agriculture's rules and statutes. Agriculture will inform the State Forester when changes are proposed to OAR Chapter 603, the Oregon Pesticide Control Act, or FIFRA that could affect the application of pesticides or other chemicals on forestlands. When such changes are finalized by Agriculture, Forestry will revise the forest practice chemical rules as needed to maintain consistency with these other laws, while still meeting the intent of the Forest Practices Act.

3. Inspections.

Forest practices foresters (FPFs), under the direction of the State Forester, will act as the primary state inspectors of forest operations involving the application of pesticides. FPFs will be directed to communicate with Agriculture and to assist in Agriculture's investigation when product label compliance questions arise on forest operations. FPFs and Agriculture investigators will investigate pesticide-related field situations in the most efficient manner possible. Investigation information will be shared among FPFs and Agriculture investigators.

4. Field Sampling and Sample Analysis

Agriculture and the State Forester will cooperate in the collection of water, soil, foliage, tissue, or other types of samples that may be needed to administer and enforce Agriculture's and Forestry's rules.

When one agency requests the other agency to collect a sample, the agency receiving the request will cooperate to the extent that available resources and other workloads will allow. In such cooperation, the agencies will agree to the sample collection, storage, and documentation protocols to be used. The cost of analyzing the sample will be borne by the requesting agency.

5. Citations and Civil Penalties

Citations will be issued by the State Forester when violations of the forest practice rules or the Forest Practices Act are detected. Citations will be issued by Agriculture when violations of the Oregon Pesticide Control Act are determined by Agriculture. Information regarding violation determinations, enforcement actions, civil penalty procedures, contested case hearings, penalty collection processes, and historical violation records will be shared between the two agencies.

The State Forester and Agriculture may coordinate in taking enforcement actions for activities which violate both the Oregon Pesticide Control Act and the Oregon Forest Practices Act. Enforcement action taken by one agency will not preclude the taking of enforcement action by the other agency. Both agencies may issue citations for pesticide product label violations. However, imposition of civil penalties for pesticide product label violations will generally be deferred by the State Forester to Agriculture.

6. Training

Agriculture and Forestry will cooperate to encourage forest landowners and licensed operators who apply forest pesticides to receive ongoing training on current forest pesticide products and the special conditions affecting forest pesticide applications.

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C. Coordination

Agriculture and Forestry mutually agree to designate the Assistant Director of the Oregon Department of Agriculture and the Director of the Oregon Department of Forestry's Forest Practices Program as contact persons to coordinate the execution of this Memorandum of Agreement.

D. Administration

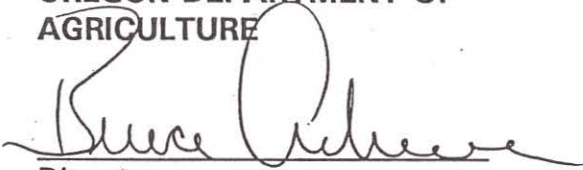
This Memorandum of Agreement will remain in effect unless it is replaced by another Memorandum of Agreement, or it is terminated either by mutual consent of the parties, or by thirty days' notice of cancellation from one party to the other party. Such termination shall be in writing.

Agriculture and the State Forester will review this Memorandum of Agreement through regularly scheduled annual coordination meetings. Any recommendations for modifying this Memorandum of Agreement will be forwarded to the Board of Forestry for consideration.

E. Expenditure of Funds

Nothing in this Memorandum of Agreement shall be construed as obligating Agriculture, Forestry, or the State Forester to expend funds or involve either party in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively available for this work.

OREGON DEPARTMENT OF
AGRICULTURE



Director

Date:

8-29-95

OREGON BOARD OF FORESTRY



Chair

Date:

7/21/95

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